

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**Dawson Community College**  
**Ullman Center – Room 102**  
**Glendive, MT**

**MAY 15, 2008**

**Commission Members Present:** Steve Doherty, Chairman (by teleconference phone); Shane Colton, Vice-Chair; Dan Vermillion; Willie Doll.

**Fish, Wildlife & Parks Staff Present:** Jeff Hagener, Director, and FWP Staff.

**Guests:** See May 15, 2008 Commission file folder for those who signed in.

**Topics of Discussion:**

- 1. Call to Order - Pledge of Allegiance**
- 2. Approval of Commission Meeting Minutes of April 17, 2008**
- 3. Approval of Commission Meeting Minutes of April 23, 2008 Conference Call**
- 4. Approval of Commission Expenses through April, 2008**
- 5. Fire Emergency Closure Administrative Rule – Final**
- 6. Cook Creek FAS Acquisition on the Tongue River - Endorsement**
- 7. Ashland FAS Acquisition on the Tongue River – Endorsement**
- 8. Terry Bridge FAS Lease on the Yellowstone – Endorsement**
- 9. HB454 Hunting Access Agreements – Tentative**
- 10. 2008 Upland Game Bird Quotas – Tentative**
- 11. Royal Teton Ranch Grazing Rights Buyout Agreement – Endorsement**
- 12. Olsen Ranch Conservation Easement – Final**
- 13. Granger Ranch Wetland Easement – Final**
- 14. Circle R Ranch Fee Acquisition – Informational**
- 15. Big Horn River Flow Impacts - Informational**
- 16. Open Microphone – Public Opportunity to Address Additional FWP Issues**

**1. Opening - Pledge of Allegiance.** Vice-Chairman Colton called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

**2. Approval of April 17, 2008 Commission Meeting Minutes.**

**3. Approval of April 23, 2008 Commission Meeting Minutes.**

*Action: Vermillion moved and Doll seconded the motion to approve the April 17, 2008 and the April 23, 2008 meeting minutes. Motion carried*

**4. Approval of April, 2008 Commission Expense Report.**

*Action: Doll moved and Vermillion seconded the motion to approve the April expense report as presented. Motion carried.*

**5. Fire Emergency Closure Administrative Rule – Final.** Director Hagener explained that in the event water bodies need to be closed due to emergency situations, particularly during fire season when interagency fire suppression teams need access to the water for scooping or dipping, the current process is to assemble a quorum of the Commission to approve of the closure. In the event a quorum of commissioners cannot be assembled in a timely manner, firefighting efforts can be delayed and the public could be endangered. In the past few years the commission has adopted seven emergency rules to address these situations, and the potential for further closures is ongoing.

This proposed rule delegates Commission authority to the Fish, Wildlife & Parks Director to close public waters in the event of a fire emergency, and reopen them when it is deemed safe. The rule affects only public waters, and the closures only last for a few days at a time. Public comments were received until April 24, 2008. Of the five comments received, two were in support, one did not want it to apply to private ponds, and two were opposed to closing access to public waters as they were concerned it might impact commercial and recreational activities.

*Action: Doll moved and Colton seconded the motion to adopt the Administrative Rule of Montana delegating Commission authority to the Director of Fish, Wildlife & Parks to close public waters in the event of a fire emergency. Motion carried.*

**6. Cook Creek FAS Acquisition on the Tongue River – Endorsement.**

**7. Ashland FAS Acquisition on the Tongue River – Endorsement.**

Joe Maurier, FWP Parks Division Administrator, explained that both the Cook Creek site and the Ashland site are located on the Tongue River, and are owned by the same landowner. The Cook Creek site is approximately eight acres in size, and is located seven miles downstream from Ashland. The closest developed public access sites are 68 miles upstream and 88 miles downstream. Developments would include signing, constructing an access road and parking area, a vault latrine, and some fencing.

The Ashland site consists of thirty acres and is also located near the town of Ashland. The closest public access sites are 62 miles upstream and 98 miles downstream. There are two large sawdust piles on the site that create an environmental concern. FWP will conduct an audit to evaluate the environmental implications and options for disposal of the sawdust. If the owners clean up the sawmill area, FWP would be willing to manage the area. As an option, the landowners have stated that they would be willing to exclude the sawmill/sawdust portion of the site from the proposal. Developments would include signing, constructing an access road and parking area, a vault latrine, and some fencing.

*Action: Colton moved and Vermillion seconded the motion to authorize the Department to pursue acquisition of the Cook Creek Fishing Access Site and the Ashland Fishing Access Site.*

Vice-Chairman Colton asked for public comment. There was none.

*Action on Motion: Motion carried.*

**8. Terry Bridge FAS Lease on the Yellowstone – Endorsement.** Joe Maurier, FWP Parks Division Administrator, explained that this proposal is to secure a much desired fishing access site on the Yellowstone River near Terry, Montana. It is twelve miles from the closest downstream site, and ten miles from the nearest upstream site. Presently, anglers use the site on a permission basis. Local and area residents have expressed strong support for the FAS. Although FWP prefers to purchase the site as a fee title acquisition, a lease will be negotiated.

*Action: Colton moved and Doll seconded the motion to authorize the Department to pursue a lease agreement for the creation of a Fishing Access Site at Terry.*

Vice-Chairman Colton asked for public comment.

Bill Leath, Prairie County employee, said he would like to see the Department acquire a fee acquisition. He wants something that will last longer than a lease agreement. He said the county would do the maintenance on the access road, but they are not in the business of working on something that may become a private site one day.

*Action on Motion: Motion carried.*

**9. HB454 Hunting Access Agreements – Tentative.** 87-2-513 MCA authorized FWP to issue either-sex or antlerless elk permits, for management purposes, to landowners who meet the conditions of the statute. Jeff Herbert, FWP Wildlife Division Assistant Administrator, explained that the John Swanz Ranch hunting agreement in Region 5 has proven to be successful since it's inception in 2002. The Swanz Hunting Access Agreement states that in return for allowing access to elk hunters, Mr. Swanz, or a family member, would receive one 411-21 either-sex permit. In turn, FWP would issue four additional 411-21 permits by random drawing from the list of unsuccessful applicants for that license permit type (LPT). Successful applicants could only hunt on the Swanz deeded property. Post-hunt evaluations confirm that agreement terms and expectations have been met to all parties' satisfaction.

*Action: Doherty moved and Doll seconded the motion to adopt the tentative Swanz Hunting Access Agreement for the 2008 general hunting season.*

Vice-Chairman Colton asked for public comment. There was none.

*Action on Motion: Motion carried.*

**10. 2008 Upland Game Bird Quotas – Tentative.** Jeff Herbert, FWP Wildlife Division Assistant Administrator, said there are no recommended changes to the restrictive package that was approved by the Commission last year.

In addition to being a poor production year for sage grouse, West Nile virus was also found in some locations. That disease is now endemic in Montana as well as some of the other western states. Typically, an increase in males is seen at the end of the lek season, but that is not the case this year which indicates poor production last year. Primary hunting pressure is during the first part of the season, and then when it runs in conjunction with antelope season. FWP proposes to maintain the current conservative bag limit of two sage grouse daily and to also maintain all other upland game bird bag and possession limits.

Doll suggested considering a one-month season instead of a two-month season for sage grouse to help address the West Nile problem as well as other factors impacting bird numbers.

Herbert stated that the US Fish and Wildlife Service requested information from FWP that must be provided by the end of June. The Service expects to make a decision by the end of this calendar year on whether or not to list the sage grouse.

*Action: Doll moved and Colton seconded the motion to approve the Upland Game Bird Regulations as proposed with the added alternative to shorten the sage grouse season to September 1, 2008 through October 1, 2008.*

Vice-Chairman Colton asked for public comment.

Keith Hall suggested instituting an “A Season” and a “B Season” that would run for 30 days each. If the harvest is met during “A Season”, then close the “B Season”. There could still be a 60-day season.

*Action on Motion: Motion carried.*

**11. Royal Teton Ranch Grazing Rights Buyout Agreement – Endorsement.** Ken McDonald, FWP Wildlife Division Administrator, explained that a 30-year grazing rights buy-out agreement with the Church Universal and Triumphant on the Royal Teton Ranch is nearing completion. Acquisition of these grazing rights would allow bison to access habitat north of Yellowstone Park on Forest Service land. Funding will be provided by three sources: by the National Park Service in the amount of \$1,500,000, by non-government groups in the amount of \$1,000,000, and by Fish, Wildlife and Parks in the amount of \$300,000 via Habitat Montana money.

This project is referenced in the Inter-agency Bison Plan as a way to expand habitat for bison outside the park boundaries. According to the Plan, twenty-five bison tested for Brucellosis would be allowed through this corridor onto Forest Service land the first year. They will be hazed back into the Park at the end of April. The second year fifty bison would be allowed, the third year would increase the number of bison, and the process would continue until one hundred bison are permitted onto Forest Service land. It is an important step in bison management.

*Action: Vermillion moved and Doll seconded the motion that FWP pursue subsequent steps to purchase the grazing rights from the Royal Teton Ranch, and tentatively commit \$300,000 of Habitat Montana funding towards that purchase.*

Vice-Chairman Colton asked for public comment.

Bill Leath, Prairie County, commented on the MACo resolution regarding bison around Yellowstone.

*Action on Motion: Motion carried.*

**12. Olsen Ranch Conservation Easement – Final.** Ken McDonald, FWP Wildlife Division Administrator, explained that FWP proposes to purchase a 612-acre conservation easement on the Olsen Ranch, which is located two miles northwest of Glasgow. The property includes more than three miles of Milk River riparian habitat, as well as hay meadows and cropland. This easement will preserve important wildlife habitats and guarantee managed public access. The cost of the conservation easement is \$452,000, which will be provided by the Habitat Montana Program and the Upland Game Bird Habitat Enhancement Program. If FWP does not move forward on this project, there is a possibility that the property will be sold to a private entity.

Twelve members of the public attended the public hearing on April 21. Three people testified, all in support of FWP acquiring a conservation easement on the Olsen property. Four written comments were received in support of the conservation easement, and one in opposition.

*Action: Vermillion moved and Colton seconded the motion to authorize the Department to purchase a conservation easement on the Olsen Ranch near Glasgow.*

Doll stated that he is in favor of conservation easements, but not in perpetuity. He is concerned that recreational appraisals significantly escalate the price of the land. If this land were appraised as agricultural land it would be considerably lower. He said area ranchers wishing to expand their operations could not afford to do so because of the high price.

Vermillion said that keeping the landscape open for public use is priceless. Land must be protected.

*Action on Motion: Motion carried. Three in favor - one opposed (Doll opposed).*

**13. Granger Ranch Wetland Easement – Final.** Ken McDonald, FWP Wildlife Division Administrator, explained that this is a wetland restoration project to be completed with in-lieu fee money. There is no exchange of money, it is strictly a donation.

FWP administered an "In Lieu Fee" wetland mitigation program from March 2004-December 2006. Over that period of time, FWP collected fees from 12 Section 404 permit applications. FWP is obligated to the U.S. Army Corps of Engineers to use those funds for mitigating wetland impacts and for follow-up protection and monitoring, specifically for establishing 16.6 acres of new wetland habitat and overlaying a protective easement on the wetland and adjacent upland acres. FWP has been working with a number of partners to restore ditched wetland habitat in the upper reaches of the O'Dell Creek drainage south of Ennis in Madison County. A mitigation project has been negotiated with the Granger Ranch for completion this spring. A protective easement held by FWP is required for completely fulfilling FWP's obligations. The perpetual conservation easement encompasses 225 acres and would be donated by the Granger Ranch. The entire ranch is already in a conservation easement – this places a protective easement on top of that for maintaining wetlands.

*Action: Vermillion moved and Doll seconded the motion to approve acceptance of the donated 225-acre conservation easement. Motion carried.*

**14. Circle R Ranch Fee Acquisition – Informational.** Ken McDonald, FWP Wildlife Division Administrator, explained this project is not progressing as quickly as had been hoped, and so he felt it important to update the Commission on the status.

The ranch consists of 4,000 deeded acres, and adjoins another 4,500 acres of state and BLM lands that are currently inaccessible to the public. There are five miles of river frontage, and only one road passing through the property. The landscape consists of cottonwood stands, sagebrush, ponderosa pines, shrubs, river channels, and sloughs. Ninety acres are irrigated with center-pivot sprinkler systems fed from the river. Wildlife includes whitetail deer, mule deer, antelope, occasional elk, sage grouse, sharp-tailed grouse, waterfowl, migratory songbirds, and a large black-tailed prairie dog colony.

This property would be a significant acquisition for habitat, and is a high priority to FWP. Development of a state park within the land is also a possibility. The landowner is not interested in a conservation easement, so fee purchase by the Department is the only viable conservation alternative. If the Department does not pursue the acquisition, the property will likely be sold as a hunting retreat or for development into home sites.

The Conservation Fund has entered into negotiations with the landowner to secure the property for FWP purchase. Two appraisals are being conducted at this time.

Gary Hammond, FWP Region 5 Supervisor, stated that there is a great deal of support for this acquisition from the Billings-area public and from the organized sporting groups. Public comments are now in the analysis stage. One landowner who borders this ranch expressed concerns about speeding vehicles, dust abatement, trespass, and fences accessing hayfields. Hammond said he committed himself to talking to the county for setting and enforcing speed limits, and assured the neighbors that FWP is a good neighbor and will work with them to address concerns.

**15. Big Horn River Flow Impacts – Informational.** Commissioner Colton shared his frustrations regarding the low water flows in the Big Horn River. He wants to assure there is enough water to sustain the fishery. A class of fish has been lost due to low waters. He is concerned there will be overcrowding and public safety issues. He asked that the Commission endorse a directive to the Department to establish criteria for closing the river. It must be broad, and adjustable. He said to get a baseline of the flows from which to develop the criteria. The resource must take priority. Vermillion agreed, adding that the Bighorn is a remarkable fishery.

Hammond said Montana is balancing the conditions with Wyoming. FWP has a long-term plan, and is willing to compromise. The amount of snowpack needs to be known - FWP needs qualifiers when sharing with Wyoming. The situation is serious. These are uncharted waters with no reference points, it will be tough to make biological conclusions. It involves a social element as well as a scientific element. FWP has good population trend data, but may have additional data needs, and a creel census needs to be conducted. Interim measures need to be in effect as long-term solutions are sought.

Colton said there must be something in place by March, 2009 for guidance, and Vermillion suggested a watershed plan for community use. Agricultural interests must be included as well.

Lenny Duberstein, Bureau of Reclamation, said he serves on the Bighorn River Issues Group, and they are trying to find a solution to some of the problems. He invited the Commissioners to participate in these meetings as well. BOR operates with a cfs that is intermediate for sustainability of the fishery. The inflow has been between 1,600 and 1,700 cfs during the last eight years of drought. It is not possible to sustain 2,500 cfs outflow. It is a serious problem, and would have to be extremely serious to reduce outflows below 1,500 cfs. BOR has to balance between all of the interests. They do not prioritize Wyoming over Montana. He said he hopes that the Commission takes the stance of working together with them.

Colton stated that by the time Lovell got the water they wanted, it wiped out a class of fish in Montana. The lake will fill at some point, but he is skeptical as to when. What will happen in the meantime? Spawn has been lost, and now that age class is not to be.

Duberstein said they hope the dam is filled this summer from snowpack run-off. DOR is dictated by federal law as to distribution of water. Even after eight years of drought, there is still a fantastic fishery. They don't operate for one specific need. The plan is to hold the river at 1,500 cfs. Once the lake is filled, they will reevaluate the situation.

Hammond said at low flows (1,500 cfs and below), the Brown Trout smolts are forced to swim out of shallow side channels into the main river where they are eaten by larger fish. At 113 % of snowpack, FWP was optimistic that the side channels would be wetted by increased cfs so small fish could survive.

The discussion will be continued at a future meeting.

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Director Hagener stated that the Defenders of Wildlife filed a motion requesting an injunction on the delisting and hunting of wolves. FWP has to provide a brief by this Friday, and there will be a hearing May 29 on a temporary restraining order. FWP plans to proceed with setting wolf quotas in June assuming a TRO is not issued.

**16. Open Microphone – Public Opportunity to Address Additional FWP Issues.**

Craig Wagner, Dawson Rod and Gun Club, commented on paddllefishing. He talked about catch and release, rules, hook size, barbless hooks, etc. He asked FWP to review the rules. Paddlefish should be managed as a sustainable sport fishery, and not as a commercial commodity. Caviar should not be a driving issue.

*Action: Doll moved and Vermilion seconded the motion to adjourn the meeting. Motion carried.*

Meeting adjourned at 11:10 a.m.

The Commissioners then toured the Intake FAS to learn about the proposed fish passage at the site, and to observe opening day of the paddlefish season and view the Yellowstone caviar operation.